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POLICY REVIEW

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In reply refer to:
I-04125/81
27 February 1981

MEMORANDUM FOR The General Counsel
Central Intelligence Agency

SUBJECT: Recommendations For Changes to Executive Order 12065 Concerning
Intelligence Activities

The February 13, 1981, memorandum from the Counsellor to the President solicits possible changes to Executive Order 12065, "National Security Information" that would enhance our intelligence-gathering capability.

I have reviewed possible changes submitted by Defense Components as well as changes developed internally. You already have expressed concern over the "balancing test" which CIA recommended for deletion from the Order. It appears that some of the intelligence community concern derives from its perception that sources of intelligence are inhibited by our apparent inability to provide adequate protection to intelligence information, sources and methods.

The proposed changes that follow are designed to respond to these perceptions and should allay foreign apprehensions about the ability of the United States to protect adequately intelligence information. Further, I believe these proposed changes may eliminate the need to do away with the "balancing test."

Change § 1-303 to read as follows:

"Unauthorized disclosure of intelligence sources and methods or foreign government information [~~or the identity of a confidential foreign source~~] is presumed to cause at least identifiable damage to the national security."

Change § 1-402 to read as follows:

"Only officials with Top Secret classification authority and agency heads listed in Section 1-2 may classify information for more than six years from the date of the original classification. This authority shall be used sparingly. In such cases, a declassification date or event, or a date for review, shall be set. This date or event shall be as early as national security permits and shall be no more than twenty years after original classification, except that for intelligence sources and methods and foreign government information the date or event may be up to thirty years after original classification."

Change § 3-403 to read as follows:

"Notwithstanding Sections 3-401 and 3-402, the Secretary of Defense

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may establish special procedures for systematic review and declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review and declassification of classified information concerning other intelligence sources and methods and the identities of clandestine human agents.

These procedures shall be consistent, so far as practicable, with the objectives of Sections 3-401 and 3-402. Prior to implementation, they shall be reviewed and approved by the Director of the Information Security Oversight Office and, with respect to matters pertaining to intelligence sources and methods, by the Director of Central Intelligence. Disapproval of procedures by the Director of the Information Security Oversight Office may be appealed to the National Security Council. In such cases, the procedures shall not be implemented until the appeal is decided."

Change § 3-404 to read as follows:

"Intelligence sources and methods and foreign government information shall be exempt from automatic declassification and twenty year systematic review. Unless declassified earlier, such information shall be reviewed for declassification thirty years from its date of origin. Such review shall be in accordance with the provisions of Section 3-3 and with guidelines developed by agency heads in consultation with the Archivist of the United States and, where appropriate, with the foreign government or international organization concerned. These guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the issuing authority, be used by any agency having custody of the information."

The foregoing proposed changes to the Order should not be adopted unless the Order also contains a precise definition of "intelligence sources and methods." Without such a definition, these proposed changes could prove unmanageable and unnecessary classification might occur within the intelligence community.

The following proposed change to the Order, though not as directly related to enhancing intelligence collection capability, may be useful in that regard if it is viewed as demonstrating the intent of the United States to protect information even when there is doubt as to the need for classification protection.

Change § 1-101 to read as follows:

"Except as provided in the Atomic Energy Act of 1954, as amended, this Order provides the only basis for classifying information. Information may be classified in one of the three designations listed below. If there is reasonable doubt which designation is appropriate, or whether the information should be classified at all, the more [~~less~~] restrictive

designation should be used until such time that the reasonable doubt is removed. [~~;-or-the-information-should-not-be-classified-~~]

Other changes that were proposed within Defense were not related specifically to "enhancing our intelligence-gathering capability" and, therefore, are not included in this paper. Those changes will be given additional consideration in connection with the Information Security Oversight Office's initiative to bring about changes to the Order.

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and Security Policy